

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

H.B., a juvenile,

Plaintiff,

v.

STATE OF WASHINGTON, *et al.*,

Defendants.

CASE NO. C18-0621-JCC

ORDER

This matter comes before the Court on Plaintiff's motion to proceed *in forma pauperis* ("IFP") (Dkt. No. 1), United States Magistrate Judge Mary Alice Theiler's Report and Recommendation ("R&R") (Dkt. No. 3), and Plaintiff's objections (Dkt. No. 6).

I. BACKGROUND

Plaintiff alleges claims against the State of Washington, the State of Arizona, and the Colchise County Superior Court under 42 U.S.C. section 1983. (Dkt. No. 1-1.) Judge Theiler recommends Plaintiff's complaint be dismissed pursuant to 28 U.S.C. 1915A(b) for failure to state a claim upon which relief may be granted. (Dkt. No. 3 at 3.) Her Report and Recommendation finds that Plaintiff's claims against Washington and Arizona are not cognizable because states are not subject to suit under section 1983. (*Id.* at 2-3.) Plaintiff objects to this finding, arguing that Arizona and Washington have waived sovereign immunity through legislation. (Dkt. No. 6 at 1.) The parties agree that Plaintiff's claim against the Cochise County

1 Superior Court is barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). (Dkt. Nos. 3 at 3, 6 at 1.)

2 **II. DISCUSSION**

3 **A. Plaintiff's Objections**

4 The Court reviews the record before it on objections to an R&R *de novo*. 28 U.S.C.
5 § 636(b)(1). The Court need not address whether Washington and Arizona have waived
6 immunity to the class of claims Plaintiff asserts, because his claims fail on other grounds.
7 Plaintiff's claims against the State of Washington are time-barred. As Judge Theiler noted,
8 federal courts addressing section 1983 claims borrow state statutes of limitations for personal
9 injury actions. (Dkt. No. 3 at n. 2); *Wallace v. Kato*, 549 U.S. 384, 387 (2007). Washington's
10 relevant statute of limitations is three years. *Bagley v. CMC Real Estate Corp.*, 923 F.2d 758,
11 760 (9th Cir. 1991). The alleged facts underlying Plaintiff's claim against the State of
12 Washington occurred on or about November 29, 2014, over three years before this action was
13 filed on April 27, 2018. (*See* Dkt. No. 1-1 at 3.) Plaintiff presents no facts that would support
14 equitable tolling of this limitations period. *See Hawkins v. Douglas County*, No. C15-0283-TOR,
15 slip op. at 9 (E.D. Wash. January 28, 2016). Thus his claims against the State of Washington are
16 untimely. Nor are Plaintiff's claims against the State of Arizona properly brought in this Court.
17 Venue is improper because the alleged harm occurred entirely in the District of Arizona. *See* 20
18 U.S.C. § 1391(b); (Dkt. No. 1-1 at 3). Therefore, the Court ADOPTS Judge Theiler's
19 recommendation to dismiss claims against current Defendants.

20 **B. Leave to Amend**

21 In response to Judge Theiler's Report and Recommendation, Plaintiff moves for leave to
22 amend his complaint. (Dkt. No. 6 at 1.) He seeks to substitute the Cochise County Sherriff's
23 Office in place of the Cochise County Superior Court and to add claims against two individual
24 residents of the State of Washington ("the Washington Defendants"), for "depriving [him] of his
25 rights while he lived in the state." (*Id.*)

1 The Court must grant *pro se* litigants an opportunity to amend prior to dismissal unless it
2 is clear that no amendment can cure the defect. *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir.
3 2012). Substitution of Cochise County Sheriff's Office will not cure the defects in Plaintiff's
4 claims against the Cochise County Superior Court. The proposed new claims arise out of conduct
5 that occurred solely in Arizona, making this Court an improper venue. (*See* Dkt. Nos. 3 at n. 2, 6
6 at 1.) If Plaintiff's claims against the Washington Defendants turn on the same facts as his claim
7 against the State of Washington, they may also be time-barred. However, Plaintiff's complaint
8 and motion to amend do not clearly indicate the timeline of the harm he alleges. Thus, the Court
9 will liberally construe Plaintiff's filings and grant leave to amend claims related to alleged harm
10 Plaintiff suffered while in Washington. *See Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).

11 III. CONCLUSION

12 For the foregoing reasons, the Report and Recommendation is ADOPTED in part. The
13 Court ORDERS as follows:

- 14 1. Plaintiff's claims against the State of Washington, the State of Arizona, and the
15 Cochise County Superior Court are DISMISSED without prejudice.
- 16 2. Plaintiff's current application to proceed *in forma pauperis* is DENIED.
- 17 3. Plaintiff is GRANTED leave to amend his claims related to alleged harm he suffered
18 while in Washington. Plaintiff must file an amended complaint and petition for *in*
19 *forma pauperis* status within twenty (20) days of the issuance of this order.

20 The Clerk is directed to send a copy of this order to Plaintiff. The Clerk is also directed to
21 send Plaintiff a copy of Docket Numbers 1, 2, 3, 4, 5, and 6, pursuant to Plaintiff's motion for
22 copies of case filed (Dkt. No. 6), which the Court GRANTS.

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1 DATED this 12th day of July 2018.

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5 John C. Coughenour
6 UNITED STATES DISTRICT JUDGE
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